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2 contemplated that the RBOC's would cooperate with the state  
3 commissions in a 271 application, and to cooperate it is  
4 expected that the RBOC's provide sufficient notice for the  
5 state to do its 271 requirements.

6 That's all I have to say.

7 CHAIRMAN GRAVES: So is there any  
8 prohibition? I mean, could we then extend that to 180 days  
9 advance notice requirement, I mean, under that theory?

10 MR. MOON: Well, the 90 day requirement is  
11 based, as you have heard, on what the recommendations of the  
12 joint body made up of Representatives of the Department of  
13 Justice, the FCC and NARUC recommended. Those are only  
14 recommendations. They don't have any - -

15 CHAIRMAN GRAVES: But since there is no  
16 prohibition against 90 days, is there similarly no  
17 prohibition against requiring a six month advance notice?  
18 Or do we draw a line anywhere?

19 MR. MOON: I think it is what is considered  
20 sufficient notice for a state commission to conduct that  
21 review. And I don't know where to draw that line. But it  
22 is based on what other parties who have more experience or  
23 more knowledge of this FCC, Department of Justice and NARUC.  
24 90 days seems to be the reasonable number. I don't think it  
25 is arbitrary. Any other number may be arbitrary.

Thank you.

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2 COMMISSIONER APPLE: Mr. Moon, let me ask  
3 just judgmentally here of your involvement, and you are  
4 well informed about the risk elements of this, given that  
5 while we are in the swamp, I remind myself of this, to give  
6 consumers choices and remove some of the barriers that have  
7 been set up, given that it seems that Bell has an approach  
8 to accelerate that and those who are not in a position to do  
9 so have an opposition to it, but given that I think we have  
10 a major responsibility to move it forward for the customer,  
11 other than this particular order, do you think we will get  
12 there as quickly, or is there any place that you think that  
13 all the commissions are going to be certain enough that we  
14 can delay things until then, or is there in your judgment  
15 reason to move ahead and see what happens?

16 MR. MOON: Your Honor, it's a tough question,  
17 but I will respond by saying that we can go fast on this  
18 application, this 271 process, the entire thing, and they  
19 will come, we will just have our 20 days to review, and the  
20 Commission though, I think, in that situation isn't going to  
21 have enough of a record to support an approval of  
22 Southwestern Bell's 271 application to the FCC so that it  
23 would bring on those benefits of interLATA toll and  
24 interLATA toll competition.

25 But if we do this correctly - - this isn't -  
- we are only asking for 90 days. This is not going to be

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2 years. If we do it correctly and make sure we have  
3 developed the record on which you can base - - this  
4 Commission can base an approval of Southwestern Bell's  
5 application and recommend an approval to the FCC, that's how  
6 you are going to speed up the introduction of more  
7 competition, because if it is rejected, if you reject - - if  
8 you recommend a rejection of 271 to the FCC, they're just  
9 going to have to start the process all over again. And if  
10 you don't have a sufficient evidentiary basis for approval,  
11 how can you recommend approval? So that's why I think we  
12 need this time period in order to develop that information  
13 so you can make an approval. So I think in that way it does  
14 promote - - it is a better avenue for promoting  
15 competition.

16 COMMISSIONER APPLE: Thank you, Mr. Moon.

17 MR. MOON: Thank you.

18 CHAIRMAN GRAVES: Thank you. Mr. Rutan. Let  
19 me ask at this point who would like to go next after Mr.  
20 Rutan. Ms. Thompson?

21 COMMISSIONER APPLE: How's that - - Are you  
22 doing all right?

23 THE COURT REPORTER: I'm getting short on  
24 paper.

25 CHAIRMAN GRAVES: Okay. Why don't we take a  
second here and take a break and allow the reporter to

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restock. And we'll give everybody a little chance to walk around.

I show five minutes after. Is that what the clock back there says?

COMMISSIONER APPLE: It's a little fast.

CHAIRMAN GRAVES: I have got about five minutes after. Why don't we come back at 3:20. And we will take a recess.

(Whereupon, a brief recess was had, after which the following occurred:)

CHAIRMAN GRAVES: Please proceed, sir.

COMMISSIONER APPLE: They all came back.

CHAIRMAN GRAVES: Yeah. We gave them a chance to run away, but they all came back.

MR. RUTAN: Your Honors, I would propose to start with the interim effect motion, and then move to the 90 day notice motion, and then finish up with the status of the AT&T and Southwestern Bell agreement. I can make some general comments about that and answer any more specific questions that you may have about that. I would be glad to respond to.

Let me start quickly with a small procedural matter. Mr. Gray had expressed some concern prior to the hearing about the letter that we sent you yesterday with a copy of the Ameritech decision and another decision, and he

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2 has expressed some concern about the appropriateness and  
3 timeliness of that. Rather than engaging in any kind of a  
4 procedural dispute over that, I will simply withdraw that  
5 and will not refer to that, just to make things easier.

6 CHAIRMAN GRAVES: Thank you.

7 MR. RUTAN: Mr. Toppins started off by saying  
8 that the two rulings or two recommendations by Judge  
9 Goldfield are inconsistent. I don't think they are  
10 inconsistent. But, more importantly, to the extent that you  
11 may think that they're inconsistent, that inconsistency  
12 results from the way Southwestern Bell presented its case.  
13 There was a fundamental error of law in Southwestern Bell's  
14 position. There was a fundamental error of fact in  
15 Southwestern Bell's position. Both of those errors had a  
16 very major impact on the way Judge Goldfield looked at this  
17 case.

18 I think it is clear from the transcript, as  
19 well as from Judge Goldfield's presentation this afternoon,  
20 that in the 252 issue about the statement of generally  
21 available terms and conditions his primary concern was  
22 making sure that new entrants had the possibility to order  
23 out of that statement of generally available terms and  
24 conditions, and his concerns about the anti-competitive  
25 impact of not granting interim relief was that new entrants  
would not be able to enter out of that generally available

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2 set of terms and conditions.

3 Now you have heard Mr. Toppins today, as well  
4 as Mr. Cleek in his testimony at page, I think it's at page  
5 46 and again on page 70 of the transcript, in each of those  
6 instances Southwestern Bell stated that they would not make  
7 the statement of generally available terms and conditions  
8 available to new entrants unless it was allowed to take  
9 interim effect. That position by Southwestern Bell is a  
10 flat out violation of Section 252(F) of the Federal Act.  
11 Let me read you that section.

12 That says, "A Bell Operating Company may  
13 prepare and file with the state commission a statement of  
14 terms and conditions that such company generally offers  
15 within that state to comply with the requirements of Section  
16 251." What they generally offer in the present tense.

17 If Southwestern Bell is not today or, for  
18 that matter, was not as of January 15, 1997 generally  
19 offering to any new entrant every single term and condition  
20 in that document, they were in violation of Section 252.

21 CHAIRMAN GRAVES: Presuming it was in effect?

22 MR. RUTAN: No. There is no requirement that  
23 it take effect. The mere fact - -

24 CHAIRMAN GRAVES: Then why are we having this  
25 hearing?

MR. RUTAN: I explained that very clearly.

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2 The only significance under the Federal Telecommunications  
3 Act of allowing a statement of generally available terms and  
4 conditions to, quote, unquote, take effect is a procedural  
5 trigger for filing at the FCC. That is the only  
6 significance whatsoever under the Federal Act of taking  
7 effect.

8 CHAIRMAN GRAVES: So under your theory they  
9 could propose some general terms and conditions, and Mr.  
10 Moon said that - - at least I thought he said that there was  
11 the opportunity for the state to review that and to  
12 determine that it was not acceptable for the state to accept  
13 those general terms. I mean, is that your interpretation  
14 also?

15 MR. RUTAN: Yes. But you have to make a  
16 distinction between a negotiated agreement and a generally  
17 available.

18 CHAIRMAN GRAVES: Yeah. And I understand the  
19 difference. And what I'm trying to get at is that they  
20 propose a general terms and conditions, okay?

21 MR. RUTAN: All right.

22 CHAIRMAN GRAVES: The state takes it under  
23 review. Under 262 we have 60 days - -

24 MR. RUTAN: That's correct.

25 CHAIRMAN GRAVES: - - to either make a  
decision affirmatively or negatively, or it goes into

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2 effect.

3 MR. RUTAN: Right.

4 CHAIRMAN GRAVES: Now if you are waiting for  
5 the state to review it and there is some uncertainty as to  
6 whether or not the state would approve it or not, why would  
7 you go out and offer it unless you are certain those are  
8 okay under the state regulatory authority?

9 MR. RUTAN: Because of the difference between  
10 a negotiated agreement - -

11 CHAIRMAN GRAVES: But it is not a negotiated  
12 deal if it is a general terms agreement if you present it on  
13 a take it or leave it basis to someone and they think, gosh,  
14 I have got to take it so I take it and then the commission  
15 say, oops, sorry, we're not going to let you do that for  
16 whatever reason.

17 MR. RUTAN: If it is a negotiated deal, if  
18 someone says, yes, I want to take that, that is a negotiated  
19 deal.

20 CHAIRMAN GRAVES: Only to the extent it is  
21 offered as a general terms and this is the easiest way to  
22 get through it. It could very well be that they might have  
23 wanted some other items and they chose not to negotiate  
24 because I want to get into it quick, so I'm willing to give  
25 up and not ask for these ten items that I have been asking  
for in other states because I will just take it because I



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2 really want to get into the Oklahoma City market, it is so  
3 lucrative I can't stand to be out of there and I'm going to  
4 come after it when in fact the Oklahoma commission could  
5 look at it and say, sorry, there are provisions of that that  
6 we just don't think are appropriate. Then they can  
7 negotiate for those things formally to be in there, but I  
8 don't view that as negotiation if it is the boiler plate  
9 that you take or leave.

10 MR. RUTAN: It is a negotiation in a sense.  
11 Certainly anybody has the freedom to accept those terms and  
12 conditions. And even if you don't approve of those terms  
13 and conditions, that does not override their ability to say  
14 I want that agreement.

15 CHAIRMAN GRAVES: Okay.

16 MR. RUTAN: When they submit negotiated  
17 agreement under Section 252, you don't have to approve that.

18 CHAIRMAN GRAVES: I understand. Fair enough.  
19 Okay. If that's the case, then why don't we just file it,  
20 we all go home and wait 60 days, it goes into effect, and  
21 then they can go file whatever 271 application they want  
22 under the Federal Act?

23 MR. RUTAN: There is a very good reason for  
24 not doing the later part of what you have said.

25 CHAIRMAN GRAVES: What? Letting it go into  
effect?

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2 MR. RUTAN: Yes. Because it does not comply  
3 with Section 252 of the Act. One of the things that's  
4 interesting about this hearing is that - -

5 CHAIRMAN GRAVES: Well, let me - - The terms  
6 and conditions they're proposing doesn't comply with 252?

7 MR. RUTAN: Absolutely not.

8 CHAIRMAN GRAVES: Okay. Where does - -

9 MR. RUTAN: Mr. Toppins has said all - -

10 VICE CHAIRMAN ANTHONY: Let him finish.

11 MR. RUTAN: All through this Mr. Toppins has  
12 sort of blithely proceeded along the assumption that this  
13 document over here complies with the Act.

14 CHAIRMAN GRAVES: Okay.

15 MR. RUTAN: Well, we were prepared to offer  
16 testimony at the prior hearing showing that in fact it does  
17 not comply with the Act. It doesn't even in a number of  
18 respects comply with the order, the arbitration order.

19 CHAIRMAN GRAVES: And you were denied the  
20 opportunity to enter the evidence?

21 MR. RUTAN: We had a witness present ready to  
22 testify and we were denied that opportunity.

23 CHAIRMAN GRAVES: Did you make an offer of  
24 proof?

25 MR. RUTAN: We did. We offered proof as to  
instances in which the agreement is not in compliance with

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2 Section 252 of the Act.

3 CHAIRMAN GRAVES: Okay. Now I'm presuming we  
4 are talking about more than just Sub-section F. Or is it  
5 specifically Sub-section F that it's not in compliance with?

6 MR. RUTAN: No. No. No.

7 CHAIRMAN GRAVES: Because I don't see any  
8 standards in F.

9 MR. RUTAN: This is on the merits.

10 CHAIRMAN GRAVES: I understand.

11 MR. RUTAN: The hearing on the merits - -

12 CHAIRMAN GRAVES: Right.

13 MR. RUTAN: - - that Judge Goldfield has said  
14 will occur - -

15 CHAIRMAN GRAVES: Right.

16 MR. RUTAN: - - What we would do at that  
17 hearing on the merits is show that this statement of  
18 generally available terms and conditions does not comply  
19 with the requirements of Section 251 and Section 252.

20 CHAIRMAN GRAVES: Uh-huh. Okay. Okay.

21 MR. RUTAN: And, therefore, you should deny  
22 it.

23 CHAIRMAN GRAVES: But notwithstanding that,  
24 the fact that you still argue that if I wanted to as a  
25 competitor, I could accept those terms - -

MR. RUTAN: You could.

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2 CHAIRMAN GRAVES: - - even though it doesn't  
3 comply with the Federal Act - -

4 MR. RUTAN: Yeah. There could be parts of  
5 the Brooks Fiber Agreement that don't comply with the  
6 Federal Act, but they chose - - I mean, that's the  
7 difference. Congress said basically if somebody wants to  
8 negotiate a deal, that is their business.

9 CHAIRMAN GRAVES: Right.

10 MR. RUTAN: We are not going to say you have  
11 to comply with the Federal Act. That's the difference  
12 between a negotiated agreement and a requirement that you  
13 must comply with - -

14 CHAIRMAN GRAVES: So by the same token there  
15 is no requirement that anybody accept the terms of a general  
16 statement of term and conditions?

17 MR. RUTAN: That's correct. Nor is there any  
18 requirement that somebody accept the Brooks Agreement - -

19 CHAIRMAN GRAVES: Well, I understand. I  
20 agree. Okay.

21 MR. RUTAN: - - or an arbitration order.

22 CHAIRMAN GRAVES: So if we agree that you are  
23 not bound by either, I guess I'm still wondering then in  
24 terms of issuing an order saying if Bell wants to offer this  
25 as a 252, go ahead, nobody is bound by it, we then come back  
under 271 and have the substantive review of whether or not

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2 they have met competition.

3 MR. RUTAN: Let me just step back for a  
4 second, because you are making an erroneous assumption when  
5 you state it that way.

6 CHAIRMAN GRAVES: Okay. All right.

7 MR. RUTAN: If you want anybody out there in  
8 the world today to be able to accept this generally  
9 available terms and conditions, if they want to, that's  
10 already true. That happened on January 15th the instant  
11 they filed the document.

12 CHAIRMAN GRAVES: Okay.

13 MR. RUTAN: Because it is their  
14 representation that they are making it generally available.

15 CHAIRMAN GRAVES: Right.

16 MR. RUTAN: If they're not, they're in direct  
17 violation of Section 252.

18 CHAIRMAN GRAVES: Okay.

19 VICE CHAIRMAN ANTHONY: And that's whether -  
20 -

21 MR. RUTAN: There is no need - - If I can  
22 just finish for a second. There is no need to get into the  
23 interim effect of the question - -

24 CHAIRMAN GRAVES: Okay.

25 MR. RUTAN: - - because that is totally  
irrelevant to that situation. As of today anybody could

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2 walk in off the street and say - -

3 CHAIRMAN GRAVES: Right.

4 MR. RUTAN: - - I want this. And as a matter  
5 of Federal Law, they are required to give it.

6 CHAIRMAN GRAVES: Okay. All right.

7 MR. RUTAN: And I'm sorry that I cut you off.

8 VICE CHAIRMAN ANTHONY: Well, I was just  
9 going to repeat that what you read said the Statute 252  
10 said, "- - company generally offers - -." So it was the  
11 word offers.

12 CHAIRMAN GRAVES: No, I understand all that.  
13 I understand.

14 MR. RUTAN: In the present tense.

15 CHAIRMAN GRAVES: I understand. So in terms  
16 of 97-20, okay, where we agreed that you don't have to take  
17 it, you can take it if you want, if you want anything else  
18 you can negotiate for it, I don't understand the fuss. I  
19 really don't. I understand the alleged interrelationship to  
20 271.

21 MR. RUTAN: And I will explain.

22 CHAIRMAN GRAVES: That is a separate matter  
23 and that I'm inclined to say the state has an absolute right  
24 to look in some detail to see whether or not that satisfies  
25 the check list requirements.

MR. RUTAN: I will explain to you exactly

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2 what the fuss is in the 97-20 docket. The fuss is over 30  
3 days. And I submit, as I will explain, the 30 days makes a  
4 difference.

5 CHAIRMAN GRAVES: Okay.

6 MR. RUTAN: What happens, if you proceed as  
7 we think this thing should take place, if you look at the  
8 Federal Act, Congress decided, and there is no dispute about  
9 this, that a Bell Operating Company like Southwestern Bell  
10 must first take its statement of generally available terms  
11 and conditions to the state commission before it can go to  
12 the Federal Communications Commission and ask for long  
13 distance relief. There is no dispute about that.

14 CHAIRMAN GRAVES: Okay.

15 MR. RUTAN: In order to protect Bell  
16 Operating Company against the possibility of delay by the  
17 Commission in reviewing that application and, therefore,  
18 delaying the ability of the Bell Company to get to the FCC,  
19 Congress said you may have 60 days to review that statement  
20 of generally available terms and conditions. If you don't  
21 conclude that it is bad, or you don't conclude that it is  
22 good, if you think you need more time at the end of the 60  
23 days, we will at least give the Bell Operating Company, if  
24 they want to, at that point in time after 60 days the chance  
25 to go to the FCC.

CHAIRMAN GRAVES: Right.

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2 MR. RUTAN: There is also the possibility  
3 that you could work out an extension of time or something  
4 like that.

5 CHAIRMAN GRAVES: Sure.

6 MR. RUTAN: But after 60 days the Bell  
7 Operating Company is free to go to the FCC if the statement  
8 has not been disapproved.

9 CHAIRMAN GRAVES: Uh-huh.

10 MR. RUTAN: But up to that 60 day point in  
11 time, the Bell Operating Company has no right to go to the  
12 FCC.

13 CHAIRMAN GRAVES: Unless the Commission  
14 affirmatively approves it in advance.

15 MR. RUTAN: Oh, yes. If you have completed  
16 all your review and you have decided on day 32 that it meets  
17 the standard, then they would be entitled to go to the FCC  
18 at that point in time.

19 If we follow the procedure that Congress  
20 contemplated giving you the full 60 days that was necessary,  
21 and I'm going to come back to describe why I think you need  
22 the full 60 days, then you would reach the end of the 60  
23 days around the middle of March. At that point in time  
24 let's assume arguendo, and it really is arguendo, that you  
25 approve the statement, at that point in time Southwestern  
Bell would be entitled to go to the FCC. They have said



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2 they would go right away. So 20 days after they file with  
3 the FCC, this Commission will be required to file its report  
4 with the FCC. That's roughly April 6th. If you were to  
5 grant interim effect today and Southwestern Bell filed with  
6 the FCC tomorrow, which is exactly what they have said they  
7 would do, your 20 days would come up on March 6th, a month  
8 earlier.

9 Why does that 30 days make a difference?

10 Well, it makes a lot of difference. Because what is  
11 involved here is a very complex review of a very complex set  
12 of circumstances. What this does by denying you these 30  
13 days and, as Commissioner Anthony said, once the 30 days are  
14 gone, they're gone, you can't get those back, it is like the  
15 oil well that's sunk, that is a problem, those 30 days are  
16 lost. Our position is that you were prejudiced in your  
17 opportunity to review this material and we are prejudiced  
18 because our opportunity at a meaningful evidentiary hearing  
19 between now and March 6th is effectively eliminated.

20 CHAIRMAN GRAVES: What interest does AT&T  
21 have in a statement of general conditions if you have  
22 already negotiated your interconnection arrangement?

23 MR. RUTAN: It is highly unlikely that we  
24 would accept the statement of generally available terms and  
25 conditions.

CHAIRMAN GRAVES: You are not required to.

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2 MR. RUTAN: We are not required to, but we  
3 could if we wanted to.

4 CHAIRMAN GRAVES: Right. But you choose not  
5 to. So what difference does it make what terms Bell  
6 provides in the statement of conditions, terms and  
7 conditions?

8 MR. RUTAN: Because under the Federal Act  
9 Congress has made it very clear that a Bell Operating  
10 Company like Southwestern Bell under no circumstances is to  
11 be allowed into the long distance market unless they have  
12 absolutely and fully complied with their obligations under  
13 251 and 252 of the Act.

14 CHAIRMAN GRAVES: I understand.

15 MR. RUTAN: We have a legitimate interest in  
16 making sure that that happens, because we are a prospective  
17 entrant in the local market.

18 CHAIRMAN GRAVES: Or making them use the full  
19 60 days.

20 MR. RUTAN: It is not the 60 days that's  
21 critical.

22 CHAIRMAN GRAVES: Well, you just told me that  
23 - -

24 MR. RUTAN: What is critical is our  
25 opportunity for a meaningful hearing before this state.

CHAIRMAN GRAVES: Well, again - -

2 MR. RUTAN: - - that they have met those  
3 requirements.

4 CHAIRMAN GRAVES: I understand. But is as  
5 far as AT&T is concerned where you followed the Act, you  
6 requested interconnection, you negotiated, you identified  
7 those issues you couldn't reach an agreement on - -

8 MR. RUTAN: That's right.

9 CHAIRMAN GRAVES: You saw an arbitration.

10 MR. RUTAN: Correct.

11 CHAIRMAN GRAVES: We had a hearing, a review  
12 by the Commission, a decision was made - -

13 MR. RUTAN: Correct.

14 CHAIRMAN GRAVES: - - on what we thought were  
15 the only remaining issues.

16 MR. RUTAN: Correct.

17 CHAIRMAN GRAVES: We have now negotiated out  
18 and resolved the interconnection problems between the two  
19 companies. What difference does it make to AT&T what is in  
20 the general terms and conditions if you have already  
21 negotiated your own interconnection arrangement?

22 MR. RUTAN: Well, the answer is it doesn't  
23 make any difference. But I want to correct something. We  
24 have not reached full agreement with Southwestern Bell. And  
25 I will come back to that.

CHAIRMAN GRAVES: Yeah. And I would

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2 appreciate understanding more fully why we are not resolved.

3 MR. RUTAN: And I'll explain that later on.

4 CHAIRMAN GRAVES: Okay.

5 MR. RUTAN: But the point I'm trying to make  
6 is our concern here is that Southwestern Bell is trying to  
7 trigger access to the FCC earlier than they're entitled to  
8 do under the Federal Act. We are prejudiced by that,  
9 because our ability to show to you that that statement of  
10 generally available terms and conditions does not comply  
11 with the Federal Act is materially inhibited by the loss of  
12 the 30 days. We made the offer of proof at the earlier  
13 hearing. Our witness was not allowed to testify. I think  
14 that it is appropriate for this Commission to take the full  
15 60 days necessary to review this for a number of pretty  
16 critical reasons.

17 CHAIRMAN GRAVES: Will our determination,  
18 affirmative or negative, of the general statements of  
19 conditions effect in any material way the interconnection  
20 arrangement between AT&T and Southwestern Bell?

21 MR. RUTAN: Potentially there could be  
22 rulings on individual issues within the SGTC that could  
23 enable us to resolve disputes that remain between us. But I  
24 would not view that as a significant - -

25 CHAIRMAN GRAVES: Okay. So there is no  
material reason that it would impact?

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2 MR. RUTAN: Probably not.

3 CHAIRMAN GRAVES: Okay. All right. So  
4 again I get back to my question. Other than your vigilant  
5 efforts to help us fulfill the requirements under the Act,  
6 what difference does it make what is contained, and only  
7 limited to AT&T's concerns, what is contained in statement  
8 of general terms and conditions if you all are well along  
9 the way of negotiating the individual concerns that you  
10 have?

11 MR. RUTAN: One possible impact could be the  
12 issue that was raised by Commissioner Anthony, - -

13 CHAIRMAN GRAVES: What? 30?

14 MR. RUTAN: Which is this - - No. This thing  
15 assuming a life of its own. I will tell you right now there  
16 is a very high probability that we are going to wind up  
17 having to come back to you - -

18 CHAIRMAN GRAVES: Okay.

19 MR. RUTAN: - - for additional arbitration of  
20 issues that were not present at the time the arbitration was  
21 decided and not, obviously, therefore, resolved in it. So  
22 to the extent that this assumes a life of its own - -

23 CHAIRMAN GRAVES: Right.

24 MR. RUTAN: - - without our having had a  
25 chance to participate in the review of it, we could be  
prejudiced when it comes time for you to conduct our second

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2 arbitration.

3 CHAIRMAN GRAVES: In what way? We're not  
4 bound by the terms of the general conditions.

5 MR. RUTAN: Well, you're not bound to it, but  
6 I think Commissioner Anthony's point was these things can  
7 assume a life of their own and assume some impacting  
8 currency which they're not really entitled to.

9 CHAIRMAN GRAVES: Well, it is only - - and  
10 while I agree with the analogy about emergency hearings and  
11 once you start drilling an oil well you can't undrill it,  
12 and we are generally unlikely to tell somebody, sorry, even  
13 though you drilled the well you can't produce it now because  
14 there was a material problem with it, I don't see the  
15 connection to this particular facts and circumstances  
16 involved wherein there are particular provisions for anybody  
17 who wishes to negotiate particular items. The Act is very  
18 clear about the time lines that must be followed in  
19 resolving it, because they were very concerned about delay  
20 tactics. And, quite frankly, they're concerned about delay  
21 tactic on both sides, on the incumbent, ensuring that the  
22 incumbent sits down in good faith and negotiates to open up  
23 networks, and, by the same token, that once that is in  
24 theory done, then the ability to move into the  
25 interexchange markets is not unduly delayed. And I can  
tell you that just in general terms if there is not an

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2 interconnection arrangement between Bell and AT&T, I think  
3 it is pretty hard to argue that there is competition on the  
4 local exchange. But it would require us to sit down and  
5 determine why there isn't an interconnection arrangement,  
6 and it might in fact require us to say, I'm sorry, that's  
7 not a reasonable objection. We think this is a delay tactic  
8 on either side.

9 MR. RUTAN: No. You are absolutely right.  
10 You will undoubtedly be presented with just that question at  
11 some point in time. And that will be a normal part of your  
12 review process under Section 271.

13 CHAIRMAN GRAVES: That's right. So that has  
14 no bearing, however, under whether or not we tentatively  
15 approve a statement of general terms and conditions, because  
16 they can - - Bell is certainly entitled to say to the FCC,  
17 see, we have got these general terms and we are ready to go  
18 do business, when in fact we can say, but, regardless of  
19 whether you have got it, no one has chosen to prefer those  
20 terms, and they're negotiating individual ones, and we have  
21 just got problems and they haven't actually interconnected  
22 with enough people to make what we think is a competitive  
23 situation.

24 MR. RUTAN: Let me be sure I understand what  
25 you are suggesting as the possible course of action. You  
are saying that you would - - the Commission, the three of

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2 you, would tentatively approve this statement of generally  
3 available terms and conditions?

4 CHAIRMAN GRAVES: Well, what is the interim  
5 order but a tentative approval?

6 MR. RUTAN: No, it is not a tentative  
7 approval. It was quite clear that what was, first of all,  
8 what was asked for, and I see you are agreeing with this,  
9 was that there be absolutely no representation whatsoever  
10 that there is any affirmative approval action being taken by  
11 the Commission.

12 CHAIRMAN GRAVES: Okay.

13 MR. RUTAN: And Judge Goldfield - -

14 CHAIRMAN GRAVES: Then I withdraw the use of  
15 the word tentative approval.

16 MR. RUTAN: The point I'm making is, the only  
17 reason to grant the interim effect - -

18 CHAIRMAN GRAVES: Uh-huh.

19 MR. RUTAN: - - is if you want Southwestern  
20 Bell to be able to file with the FCC tomorrow. That is the  
21 only reason to do it. There is no other reason to grant  
22 interim effect. If you want somebody to be able to accept  
23 the terms and conditions, that's already true. That was  
24 true as of January 15th.

25 CHAIRMAN GRAVES: Right. Right.

MR. RUTAN: My argument is, you should not



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2 want Southwestern Bell to be able to go and file with the  
3 FCC tomorrow - -

4 CHAIRMAN GRAVES: Uh-huh.

5 MR. RUTAN: Because all of this evidentiary  
6 process that your Staff has recommended, the evidentiary  
7 hearing that Judge Goldfield has said that we are entitled  
8 to - -

9 CHAIRMAN GRAVES: Uh-huh.

10 MR. RUTAN: - - to present evidence that  
11 shows that it doesn't meet the requirements of the Act, - -

12 CHAIRMAN GRAVES: Uh-huh.

13 MR. RUTAN: - - all the evidence that relates  
14 to the question you just asked me - -

15 CHAIRMAN GRAVES: Uh-huh.

16 MR. RUTAN: - - as to who's at fault for the  
17 fact that there is not an interconnection agreement, all the  
18 evidence that's related to whether or not they have done  
19 their One-Plus presubscription filing - -

20 CHAIRMAN GRAVES: Uh-huh.

21 MR. RUTAN: - - all the evidence that's  
22 related to whether or not they have met the requirements of  
23 a separate subsidiary - -

24 CHAIRMAN GRAVES: Uh-huh.

25 MR. RUTAN: - - and your report on all of  
that stuff is due on March 6th.